

ENSURING OPENNESS AND PROBITY IN VICTORIAN GOVERNMENT CONTRACTS

IMPLEMENTATION GUIDELINES

On 11 October 2000, the Premier made a major policy statement '*Ensuring Openness and Probity in Victorian Government Contracts*'. The statement can be accessed via the Department of Premier and Cabinet website.

The policy statement relates to: contracts for the supply of goods and services to Government; investment attraction contracts; and contracts for the transfer of assets to the private sector. It does not apply to contracts of employment.

The statement announced a five-point program to ensure probity:

1. *independent oversight of all major Government contracting activities, including construction contracts;*
2. *probity plans to be prepared for all tenders worth more than \$10 million;*
3. *Secretaries to appoint probity auditors for large, sensitive or complex transactions;*
4. *probity auditors' reports to be available for scrutiny; and*
5. *increasing the profile of probity issues across the public sector:*
 - *all major public sector agencies and GBEs will be required to produce a statement on the processes they have adopted to deliver standards of probity at least as high as required under VGPB guidelines; and*
 - *the Minister for Local Government to consult with local government on adoption of probity and disclosure standards as part of Best Value Principles.*

In addition, the statement announced the following measures to secure open government:

6. *disclosure of contracts to be required by legislation. Limited exceptions to disclosure based on the criteria set out in the Freedom of Information Act. Where a measure of confidentiality is agreed, this should be time-limited where possible. The principles are to be applied by all agencies and GBEs;*
7. *for all contracts above \$100,000 but less than \$10 million in value, summary information is to be posted on VGPB website;*
8. *Departmental contracts over \$10 million are to be disclosed in full on the VGPB website, together with Request for Tender documents. If, based on FOI criteria, clauses have been excluded from the contracts, a note explaining the reason for the exclusion will be included;*

9. *agencies to advise tenderers of the limitations on contractual confidentiality;*
10. *guidelines will be published on FOI Act criteria;*
11. *standard clause to be included in contracts requiring contractors to provide any information that Departments or agencies reasonably require to comply with requests from the Auditor General;*
12. *Minister to review performance data currently collected and consider how and when it might be made public;*
13. *disclosure of 70 contracts entered into by Kennett Government as recommended by Audit Review of Government Contracts;*
14. *where major events and business attraction contracts cannot be disclosed, the Minister will notify Parliament via the Annual Report and explain the reasons for non-disclosure; and*
15. *the Annual Financial Statement will report on budget sector funding of (a) major events and (b) inward investment in the preceding year.*

The purpose of these guidelines is to provide a framework to help achieve the highest standards of probity and transparency in all Government contracts.

GUARANTEEING PROBITY

1. independent oversight of all major Government contracting activities, including construction contracts

It will be the responsibility of Departmental Secretaries to determine how to implement independent oversight of contracting activities not subject to VGPB scrutiny. Options include detailed oversight of each contract by the Accredited Purchasing Unit or a quality assurance approach monitored by the Departmental Audit Committee or, for construction contracts, the Contracts Advisory Panel of the Building Policy Division of DOI.

The Minister for Planning will issue a guideline requiring oversight of construction contracts, and the disclosure of construction contracts.

2. probity plans to be prepared for all tenders worth more than \$10 million

For transactions above \$10 million, Departments will develop and adopt a probity plan before the commencement of the tendering process. The probity plan must be in line with VGPB best-practice guidelines. In order to safeguard the integrity of major, complex or sensitive procurement activities, the process must be subject to independent oversight. This may either be conducted by the VGPB or an external probity auditor.

3. Secretaries to appoint probity auditors for large, sensitive or complex transactions

The decision on whether to appoint an external probity auditor for a project rests with the Secretary of the Department. The auditor will produce a full report at the end of the process, certifying that all procedures have been observed.

The VGPB will establish a whole-of-government panel of probity auditors. Further information, including a standard project brief and a template for the probity auditor's signoff, will be available. New guidelines on probity in major projects are also to be published.

4. probity auditors' reports to be available for scrutiny

Departments should make these reports available on request. Another option for contracts above \$10 million is to make these available on the Contracts Publishing System, together with the contract.

5. increasing the profile of probity issues across the public sector

- ***all major public sector agencies and GBEs will be required to produce a statement on the processes they have adopted to deliver standards of probity at least as high as required under VGPB guidelines; and***
- ***the Minister for Local Government to consult with local government on adoption of probity and disclosure standards as part of Best Value Principles.***

The Departmental Secretary should write to all agencies advising them of this requirement, and any reporting requirements.

The approach to probity and disclosure may vary depending on the size or governance arrangements of the entity. For example, schools may be asked to comply with Departmental requirements while a hospital may be asked to produce its own policy paper.

Further information is available from the VGPB.

SECURING OPEN GOVERNMENT

6. legislated requirement for Departments to disclose contracts, with limited exceptions to disclosure based on the criteria set out in the Freedom of Information Act. Where a measure of confidentiality is agreed, this should be time-limited where possible. The principles are to be applied by all agencies and GBEs.

The Minister for Finance will issue a Direction under the Financial Management Act. The Direction will replicate the policy requirements and provide for compliance reporting.

7. for all Departmental contracts above \$100,000 but less than \$10 million in value, summary information is to be posted on VGPB website

Departments can determine a commencement date for this reporting which must be no later than the date of the Premier's policy statement ie 11 October 2000. For those Departments who have been reporting this information voluntarily on the VGPB's Contract Publishing System, an earlier commencement date can be set.

The VGPB has issued guidelines to assist Departments in implementing this requirement—see Attachment A.

- 8. *Departmental contracts over \$10 million are to be disclosed in full on the VGPB website, together with Request for Tender documents. If, based on FOI criteria, clauses have been excluded from the contracts, a note explaining the reason for the exclusion will be included.***

It is expected that Departments will disclose any contracts >\$10 million which have already been signed since the Bracks Government came to office as well as all future contracts >\$10 million.

The VGPB has issued guidelines to assist Departments in implementing this requirement—see Attachment A.

- 9. *agencies to advise tenderers of the limitations on contractual confidentiality***

It is the responsibility of each agency to advise tenderers of the Government's policy on disclosure of contracts. This should be included in request for tender documentation.

- 10. *guidelines will be published on FOI Act criteria***

The guidelines will be prepared by the Department of Justice and will be available via both the DPC and VGPB websites.

- 11. *standard clause to be included in contracts requiring contractors to provide any information that Departments or agencies reasonably require to comply with requests from the Auditor General***

The VGPB's standard contract will include a clause requiring that contractors provide such information.

- 12. *Ministers to review performance data currently collected and consider how and when it might be made public***

Each Department is responsible for implementation of this policy in relation to its contracted services.

- 13. *disclosure of 70 contracts entered into by Kennett Government as recommended by Audit Review of Government Contracts***

Implementation of this requirement is substantially complete. Finalisation of remaining negotiations and disclosure is the responsibility of the relevant Departments.

- 14. *where major events and business attraction contracts cannot be disclosed, the Minister will notify Parliament via the Annual Report and explain the reasons for non-disclosure***

Implementation is the responsibility of DSRD.

- 15. *the Annual Financial Statement will report on budget sector funding of (a) major events and (b) inward investment in the preceding year***

Implementation is the responsibility of DSRD, in consultation with the Budget and Financial Management Division of DTF.

DISCLOSURE OF CONTRACTS:

CONTRACTS PUBLISHING SYSTEM

This policy has been revised to incorporate recent Government decisions, principally those outlined in the Premier's Policy Statement: 'Ensuring Openness and Probity in Victorian Government Contracts'.

The Contracts Publishing System (CPS) has been established as a key measure to implement the Government's objectives of transparency in contracting processes and disclosure of contract outcomes.

Effective immediately, Departments are required to report all contracts and standing offers for goods and services with an estimated value of \$100,000 or more on the Contracts Publishing System (CPS) located at <http://www.contracts.vic.gov.au>. This reporting requirement also applies to operating and financial leases, and leases under which Departments receive revenue. The Government plans to make a legislative requirement that agencies disclose the full text of contracts over \$10 million in value, subject to application of Freedom of Information criteria. In the meantime, Departments should proceed to disclose, in full, contracts over this value on the CPS, together with the Request for Tender.

Separate arrangements will apply to construction contracts, as outlined below.

The CPS is an Internet-based service which provides a simple user interface for Departments to report their contracts and standing offers. The CPS also provides an Internet access point enabling the public (including industry) to interrogate the contracts information to a limited level.

A high degree of commonality exists between data published on the CPS, and contracts reporting systems in other jurisdictions, particularly the Commonwealth. This is based on a medium-term strategy, agreed at the interjurisdictional forum—the Australian Procurement and Construction Council—to develop an interactive website and central discovery point for Government tenders and contracts.

Contracts

A contract is an agreement for the procurement of goods and services under which a Department is obliged to pay public money to a supplier. Departments are required to notify on the CPS contracts and agreements for the procurement of goods and services under which the State is obliged, or may become obliged, to pay public money. These include purchase orders or written contracts and leases over \$100,000 in value.

Standing Offers

A standing offer agreement is not a legally binding contract to supply goods or services. It is a procurement agreement subject to specified terms and conditions which enables an agency to buy goods and services over a specific period of time. Each time an agency uses a standing offer to order goods or services, a discrete contract arises.

The financial threshold for reporting contracts and standing offers for goods and services is \$100,000 or more.

Details of contracts and standing offers to be reported on the CPS include:

- Department (including Department reference)
- description of goods or services sufficient to identify the nature and quantity of the procurement
- for contracts and for variations, total estimated cost/value or liability (for contracts which span 1/7/2000, the GST-inclusive liability should be stated)
- for Common Use Arrangements (CUAs) and standing offer agreements, the total estimated cost/value (including GST value) and period of offer
- for each supplier, its name, postal address, post code, State, ABN and DUNS number
- name and phone number of Departmental contact officer
- PURIST code for the goods or services procured
- grounds for exclusion of any information

What Departments must report on the CPS

- contracts, including purchase orders, written contracts, leases, and service contracts and maintenance agreements with a value of \$100,000 or more;
- standing offers with a value of \$100,000 or more;
- contract amendments with a value of \$100,000 or more (the notification should not include the original contract value as this should have been reported within the first four weeks of the agreement); and
- a contract written under the umbrella of a standing offer (the reported value of such a contract should be the value of the specific contract being reported and not the gross value of contracts under the standing offer).

Inter-departmental transactions are not required to be reported on the CPS. However, Departments which have elected to review or approve these arrangements via their Accredited Purchasing Unit may wish to publish them. This will be subject to review after the system has operated for some time.

It is expected that the Minister for Planning will issue a Direction under the Project Development and Construction Management Act 1994 which will require Departments to provide summary information on the CPS for all construction-related contracts above \$100,000. In the meantime, Departments are expected to publish details of construction contracts on the CPS.

What Departments should not report on the CPS

- payments of monthly accounts payable under an existing and previously reported contract

- transfers of funds to other agencies, or trust funds within an agency which are not in return for goods and services
- grants to outside bodies
- tax payments, including FBT
- salaries of VPS staff and TA payments

Timeframe for reporting contracts and standing offers on the CPS

All Departments have been advised to amend standard Terms and Conditions of Tendering and Terms and Conditions of Contracts as published by the VGPB, and have been provided with new clauses drafted by the Victorian Government Solicitors Office. Departments are required to incorporate these amendments in all bid documents released after 1 April 2000.

A contract or standing offer must be reported within four weeks of entering into the agreement. The officer who organises a contract or standing offer must arrange for it to be reported on the CPS. If a contract or standing offer is not reported within the required timeframe, Departments must still report it as soon as possible.

Exemptions from reporting on the CPS

Departments and agencies subject to the VGPB supply policies are required to report. However, it should be noted that public-sector agencies and GBEs are required to have regard to the Government's overall disclosure policy and to document their own procurement and disclosure policies accordingly, as outlined in the Premier's Policy Statement.

A Department will have the consent of the contractor under the terms of the tender and the contract unless there is a tender which has particular confidentiality provisions attaching to it. Therefore, there will generally be no exemption under the FOI Act unless there is an exemption applicable to the State or a third party.

If the CEO of an agency decides that details of a contract or standing offer are exempt matters under the FOI Act 1982, he or she may then direct in writing that the details are not to be notified on the CPS.

This issue should be dealt with on a case-by-case basis. It may mean that the name of the contractor would be published but certain other contract details would not. Operationally, this requires Departmental officers to include in the 'Description' field of the CPS that particular details are exempt under the FOI Act.

For further guidance on the issue of disclosure, officers should refer to the Premier's Policy Statement and to forthcoming Guidelines being developed by the Department of Justice.

Access to the CPS

The CPS is operational 24 hours a day, 7 days a week throughout the year. Administrators require Internet Explorer V4 or Netscape Navigator V4.

Suppliers, buyers and the community at large are able to view contract results at the Internet address <http://www.contracts.vic.gov.au>. as noted above.

As the CPS is a web-based self service system, Departmental officers are able to upload contracts from workstations at any time. Officers use the same password-protected page (Login page) to administer both tenders and contract information. This can be accessed at the following Internet address:

<http://www.tenders.vic.gov.au/admin/admin.asp>

The CPS and the Tenders System are linked: the Tenders System feeds data to the CPS by the click of a button. The publishing date for contract information is controlled by Departmental administrators.

For technical advice on the operation of the CPS, and for password administration, departmental officers should email liliana.sousa@dtf.vic.gov.au.